

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 30 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DAVID R. SMITH,

Plaintiff-Appellant,

v.

COUNTY OF SANTA CRUZ; et al.,

Defendants-Appellees.

No. 16-17232

D.C. No. 5:16-cv-02376-EJD

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

Submitted June 26, 2017**

Before: PAEZ, BEA, and MURGUIA, Circuit Judges.

David R. Smith appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action arising from a special assessment lien. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1).

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Crum v. Circus Circus Enters., 231 F.3d 1129, 1130 (9th Cir. 2000). We vacate and remand.

The district court dismissed Smith's claims as barred by the Tax Injunction Act ("TIA"), 28 U.S.C. § 1341, based on the determination that the special assessment lien recorded against Smith's property was a tax under the TIA. However, the district court did not consider all of the applicable factors in reaching its determination, including (1) the entity that imposes the charge; (2) the parties upon whom the charge is imposed; and (3) "whether the assessment is expended for general public purposes, or used for the regulation or benefit of the parties upon whom the assessment is imposed." *Bidart Bros. v. Cal. Apple Com'n*, 73 F.3d 925, 931-32 (9th Cir. 1996) (setting forth three-factor test for determining whether an assessment is a tax under the TIA). We vacate the district court's judgment and remand for the district court to apply the *Bidart* test in the first instance.

In light of our disposition, we do not consider any other contentions raised on appeal.

Smith's motion for judicial notice (Docket Entry No. 9) is denied.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.